

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

JAMES D. BOWIE,

No. 15-10144

Debtor(s).

Memorandum re Interest Rate

The court has confirmed debtor James Bowie's Chapter 11 plan, reserving only the interest rate to be paid to Creditor Carol M. Alberigi on her secured claim. Bowie argues that the correct rate is 5.2%, while Alberigi urges 7%. Bowie has supplemented his motion with a declaration of an expert, while Alberigi's opposition is supported only by argument. The parties have stipulated to submitting the matter on the record.

Interest rates are generally established by starting with the current prime rate and increasing the rate on account of risk factors, which vary from case to case. *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The role of the court is generally to select a rate which is high enough to compensate the creditor for its risk but not so high as to doom the plan. While the burden regarding Chapter 11 confirmation is on the debtor, the burden of demonstrating a proper interest rate is generally on the creditor. *Till*, 541 U.S. at 479; *In re San Francisco Medical Associates, Inc.*, 2013 WL 5529647*3 (Bkrtcy.N.D.Cal. 2013).

The court is generally persuaded by the expert testimony, except in two regards. First, the

1 prime rate has increased since his declaration was filed, from 3.25% to 3.5%. Second, his assignment
2 of 1.95% for net risk factors seems both vague and low. Given that the value of Alberigi's secured
3 claim has been written down to the value of the property, the value assigned to the risk should be
4 higher. If a "standard" interest rate would be 4% to 5% as he testifies, a rate of 5.2% in this case is too
5 low.

6 After considering the testimony and all the facts and circumstances, the court concludes that
7 the risk factor assessment should be 2.5%, and that this should be added to the current prime rate of
8 3.5%. The court will accordingly fix Alberigi's interest rate at 6%.

9 Counsel for Bowie shall submit an appropriate form of order which counsel for Alberigi has
10 approved as to form.

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12 Dated: January 26, 2016

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15 Alan Jaroslovsky
16 U.S. Bankruptcy Judge
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